

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.1674 OF 2023
WITH
INTERIM APPLICATION NO.4438 OF 2023**

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Sachin @ Dnyaneshwar Kashinath Chikane ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Ashok Dubey, Ms. Shweta Yadav, Mr. Amit Pandey i/b. SAVJ Law Solutions, for the Applicant.

Mrs. G.P. Mulekar, APP, for the Respondent/State.

Mr. Yash Dewal, for the Intervener.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 18, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant who is arraigned in C.R. No. 249 of 2022 registered with Ambarnath police station for the offences punishable under sections 120-B, 302, 307, 387, 324, 201 read with 34 of Indian Penal Code, 1860 and section 3 read with 25 and 4 read with 27 of Arms Act and section 37(1) read with 135 of Maharashtra Police Act, seeks to be enlarged on bail.

3. Ganpat Gunjal, the first informant, is a vegetable vendor. His brother Tushar Gunjal (the deceased) was also engaged in the same business. The first informant had known accused No. 1 Sanjay Patil who was a notorious offender with many crimes registered against

him. Since the year 2007 they had cordial relations.

4. The first informant alleged accused No. 1 Sanjay was released from prison two years prior to the occurrence. Accused No. 1 demanded a sum of Rs. 2 lakhs on the count that the work of demolition of the building, which was to be allotted to him, came to be allotted to the first informant. Accused No. 1 Sanjay threatened him to stop the said work and eliminate the first informant if the said amount was not paid. A month prior to the occurrence, accused Sanjay and Nepali @ Louki and their four associates had assaulted him by means of iron rods and also threatened to eliminate him. However, out of fear, the first informant did not report the matter to police. On 20th July, 2022 also accused No. 1 Sanjay had called the first informant and threatened to kill him. Fearing retaliation, the first informant did not report the matter to police.

5. On 29th July, 2022 in between 2.00 to 2.15 pm while the first informant was chatting with his friend Shankar Shitole and Avinash, a metallic gray colour car passed them and stopped at a distance. While the first informant was proceeding towards his home, somebody gave blow on his head. He fell down. The first informant noticed that the co-accused Nepali @ Louki and Shankar Shinde were the assailants. When Shankar Shitole, the first informant's friend, came to his rescue, the accused assaulted him.

Co-accused Nepali @ Louki gave a blow by means of chopper on the left hand and head of the first informant. He raised an alarm. Thereupon the deceased came to his rescue. While the deceased was trying to save the first informant, the co-accused Shankar Shinde fired at the deceased. Co-accused Shankar Shinde aimed a shot at the first informant also. However, the pistol became dis-functional. Thereupon, hearing the alarm raised by the first informant and the deceased, Ganesh Devkar came to their rescue and started to pelt paver-blocks on the co-accused Shankar Shinde and Louki @ Nepali. Thereupon, the said assailants fled in the metallic gray car in which accused No.1 Sanjay Birajdar @ Patil was sitting along with another unknown person. Thereafter, the deceased was shifted to hospital.

6. The deceased succumbed to the injuries. The applicant is alleged to be the person who was driving the said car.

7. During the course of the investigation, it transpired that the applicant was a confederate in the conspiracy. There was a financial transaction between the applicant and the co-accused Sanjay Patil, days prior to the alleged incident. The car used for the commission of the alleged offence was being used by the applicant. Two witnesses identified the applicant as the person who was at the wheel of the said car. There were other circumstance which indicated that the applicant was a privy to the alleged offence.

8. Mr. Ponda, learned senior Advocate for the applicant, submitted that the first informant had not named the applicant as one of the assailants. Admittedly, there were only two assailants. First informant alleged that there was an unknown fourth person. In fact, the first informant alleged in the first information report that he had known the associates of the accused No. 1 Sanjay and the applicant was one of them. Yet, the first informant did not state that the applicant was the person who was at the wheel of the said car. Mr. Ponda would urge that the prosecution has made an endeavour to rope in the applicant by belatedly recording the statements of two witnesses namely, Yash Jadhav and Sagar Ingle after more than one and half month of the occurrence.

9. The circumstances of the transfer of the amount of Rs. 3,27,000/- by accused No. 1 Sanjay Patil to the applicant through witnesses Ganesh Sonawale, prior to the day of the occurrence, does not incriminate the applicant. Though the applicant was using the car allegedly employed for the commission of the offence yet there is no material to show that at the time of the occurrence, the applicant was driving the car. Therefore, the applicant deserves to be enlarged on bail.

10. Mrs. Mulekar, learned APP resisted the prayer for bail. It was submitted that the applicant was very much confederate in the

conspiracy to commit the offence. The deceased was shot dead in a broad day light. Moreover, there are circumstances before and after the occurrence which squarely incriminate the applicant. Two of the witnesses have specifically stated that they had seen the applicant at the wheel of the car. Thus, the applicant does not deserve to be released on bail.

11. The learned counsel for the Intervener supplemented the submissions of learned APP. It was urged that there is both direct and circumstantial evidence which firmly establishes the complicity of the applicant.

12. I have carefully considered the material on record and the submissions canvassed across the bar. In the first information report, the first informant has stated that he has known the applicant as one of the associates of accused No. 1 Sanjay.

13. On the core of the occurrence, two persons were named as the assailants with a specific role. Louki @ Nepali unleashed blows by means of chopper and Shankar Shinde fired at the deceased by pistol. The first informant further claimed that accused No. 1 Sanjay was in the Ertiga car. The controversy revolves around the identity of the fourth person who was driving the car.

14. Three persons were injured in the alleged occurrence. First the deceased, second the first informant and third, first informant's

friend Shankar Shitole. As the first informant had known the applicant from before, the fact that the first informant had not named the applicant and stated that there was an unknown person, prima facie cannot be said to be inconsequential or immaterial. It is pertinent to note that the first informant claimed that he had seen accused No. 1 Sanjay Birajdar sitting inside the car. This prima facie implies that the first informant had an opportunity to notice the persons who were in the car. Therefore, the submissions on behalf of the applicant cannot be brushed aside lightly.

15. The statement of Mr. Shankar Shitole, the injured also assumes importance. Shankar Shitole states that initially the assailants were armed with wooden logs. After the initial fight, those two persons went towards Rotary Club. The first informant chased them with a stick. There was a fight between those two assailants and first informant in front of Abhay Art. The first assailant took out the chopper and assaulted the first informant. The second assailant brought a pistol and fired at the deceased. After alarms were raised, those two assailants fled away in the gray car. Shankar Shitole did not state about the presence of the applicant.

16. The statement of Shankar Shitole indicates that at the time of the first fight, the assailants were armed with wooden logs. They

ran away. First informant chased them with a stick and at the time of second fight, the assailants took out deadly weapons and assaulted the first informant and the deceased. This sequence bears upon the question of pre-mediation and sharing of common intention.

17. It is true Yash Jadhav and Sagar Ingle have claimed that they had seen the applicant driving the said car at the time of the alleged occurrence. However, the delay of more than one and half month in recording their statements in the absence of the claim of the first informant and Shankar Shitole, who had the opportunity to see the assailants in the car at the close quarters, prima facie gives heft to the submissions of Mr. Ponda.

18. As regards the circumstances pressed into service by the prosecution namely, financial transaction between the applicant and the co-accused Sanjay, the applicant having been seen in the company of co-accused Shankar Shinde post the occurrence and the statement allegedly made by the applicant before Ganesh Sonavale that there was a quarrel in which a person had died, prima facie do not appear to have such incriminating tendency as to implicate the applicant as a confederate in the conspiracy. Whether the aforesaid circumstances are adequate to draw an inference of criminal conspiracy is a matter for adjudication at the trial.

19. The applicant has been in custody since 12th September, 2022. The evidence qua the applicant appears to be predominantly of circumstantial nature. It is unlikely that the trial can be concluded within a short period of time. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.249 of 2022 registered with Ambarnath police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at the jurisdictional Court of Session at Thane on the first Monday of every month, till conclusion of the trial.
- 4] The applicant shall not enter the limits of Ambarnath police station for a period of two years or till conclusion of the trial whichever is earlier.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)